

# Congress of the United States

Washington, DC 20515

October 5, 2012

The Honorable Timothy Geithner  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Secretary Geithner:

The October 12, 2012, compliance deadline is rapidly approaching for a variety of new rules issued pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) (“Dodd-Frank”). Undoubtedly, as Chairman of the Financial Stability Oversight Council (FSOC), you are well aware that widespread confusion and uncertainty exists among market participants regarding the implementation of these new rules, especially with respect to exactly how the Commodity Futures Trading Commission (CFTC) plans to impose and enforce these rules.

As you know, Section 112 of the Dodd-Frank Act requires the FSOC to monitor “domestic and international financial regulatory proposals and developments” while making “recommendations in such areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets.” As Chairman of the FSOC, we ask that you intervene prior to the October 12 deadline and provide clarity and certainty for U.S. market participants. If the FSOC votes to delay implementation or provide broad exemptive relief, it would prevent any possible destabilization of the U.S. swaps markets. Any unnecessary interruption of our financial markets could have deep and lasting economic ramifications, an outcome that the FSOC must avoid.

Indeed, recent letters sent by numerous international regulators to the CFTC suggest that there is a serious lack of coordination between the CFTC and its foreign counterparts. Within our own borders, despite no statutory mandate for a separate course of action, the CFTC has issued its own “interpretive guidance” on the cross-border application of Title VII without coordinating with the Securities and Exchange Commission (SEC). We are very concerned that the CFTC’s proposed guidance will ultimately result in two very different regulatory regimes governing swaps and security-based swaps. We must avoid the illogical creation of a disparate regulatory environment that would result in the same market participant being deemed a “U.S. person” for trading swaps while simultaneously considering them a “non-U.S. person” for trading security-based swaps. Without global coordination, U.S. market participants will be permanently disadvantaged if their business is siphoned away by foreign competitors, which could significantly impair our markets for the foreseeable future.

Furthermore, the CFTC and SEC have yet to provide guidance or instruction to the marketplace on how to exactly define an “eligible contract participant” for entering into a swap or security-based swap transaction. The lack of regulatory clarity will force many institutions to leave the marketplace as a result of legal uncertainty. This result will, in turn, increase the cost of borrowing for some customers, or eliminate certain types of contracts used for hedging. If either occurs, businesses will be left exposed to market volatility and the consequences will ultimately be felt by Americans in the form of increased consumer costs.



Foreign exchange (FX) swaps must be exempt from the cap imposed by the rules to implement Title VII's swap dealer registration, mandatory clearing, and exchange trading requirements. The Treasury Department has the exclusive authority to make this decision, and we urge you to finalize rules that exempt FX swaps as soon as possible so that institutions can make informed compliance decisions and restore certainty to the FX marketplace.

Another critical issue which has emerged in recent weeks is the possible requirement by the CFTC to have securitization trusts register as "commodity pool operators." The SEC already has substantial authority to regulate the registration, reporting and disclosure for public securitization trusts in addition to privately-issued securitizations. The necessity for duplicative regulation of these products is questionable. As you know, a securitization trust may use a single swap to hedge against currency or interest rate risk when securitizing everyday products like auto loans and mortgages. If the CFTC designates these trusts as commodity pools on October 12, the registration requirements could fundamentally alter the availability of securitization as a financing mechanism. For example, a commodity pool registration requirement would eliminate the ability of captive finance companies to use Title VII's "end-user exemption" for clearing, and would subject them to the regulatory regime created by Section 619 of the Dodd-Frank Act, also known as the "Volcker Rule." If this is allowed to occur, access to consumer credit will suffer as a result. As you will remember, the securitization marketplace came to a grinding halt on the very day that President Obama signed the Dodd-Frank Act into law. The FSOC has the responsibility to avoid a similar market shutdown due to yet another Dodd-Frank reform.

A thoughtful, deliberate and reasoned implementation of Title VII is crucial to well-functioning U.S. financial markets. Rules implemented to meet arbitrary or rushed deadlines will result in needless economic harm and market confusion. One example of such harm is the possibility that utility costs will rise for millions of Americans due to new regulations that will cause much of the market to abandon dealing with public utilities. Along with a petition for relief filed by many of these utilities, dozens of other exemptive relief and no-action letter requests have been filed with the CFTC from a variety of market participants. If the CFTC ignores these requests or hastily implements Title VII, these new rules will harm America's economic engine by impairing many of the companies that provide vital financing to consumers and American businesses.

Please acknowledge receipt of this letter and your action plan prior to October 12. We are hopeful that the FSOC will not allow an inflexible implementation of new rules to needlessly disrupt the U.S. derivatives marketplace.

Sincerely,



Frank D. Lucas  
Chairman  
Committee on Agriculture



Spencer Bachus  
Chairman  
Committee on Financial Services



K. Michael Conaway  
Chairman  
Subcommittee on General Farm  
Commodities and Risk Management



Scott Garrett  
Chairman  
Subcommittee on Capital Markets  
and Government Sponsored Enterprises